CURRENT LEGISLATION

THE UNIFORM LIMITED PARTNERSHIP ACT.*—At common law co-enterprisers are subject to unlimited liability for the obligations of the association. The desire for some form of organization where this liability is limited, lead to the institution of corporations. Similarly, limited partnerships, where one or more of the co-enterprisers are relieved of unlimited liability, were introduced. These are wholly the creations of statute,[1] originated because of the needs of new or expanding commercial ventures for increased capital. Men able and willing to invest a share of their wealth in partnership ventures were deterred by the fear of unlimited liability. To protect them the first limited partnership statutes were passed.[2] On the other hand, legislatures were influenced by the ever-present desire to safeguard the interests of third parties dealing with an association and relying not only upon the joint assets, but also upon the individual resources of the component members. Previous statutes have been so greatly influenced by this latter consideration that almost all have subjected the special partner to the strictest compliance with all the terms of the statute, and unlimited liability for slight transgressions, whether made by himself or others. None has gone so far to effectuate the primary purpose of such laws and give real protection to the limited partner, while at the same time protecting creditors, as has the Uniform Limited Partnership Act.

The partnership law of New York[3] will be affected in many particulars by the adoption of the new Act. A much more detailed certificate of organization is provided for[4] than under the old law.[5] Not only must it set forth the name, location, character, and term of existence of the enterprise, with the names and contributions of each partner as heretofore, but it also may embody clauses as to future contributions, the return of those made, the priority of such payment, and also concerning the substitution and addition of limited partners in the future, and the right of the general partners to continue the business after the death of one of the members. Formerly this certificate had to be filed in each of the several counties where the partnership had a place of business;[6] now filing is required only in the office of the clerk of the county where the principal office is located.[7] An affidavit as to the contribution of the limited partners was a

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*On April 13th, 1922, the Uniform Limited Partnership Act was enacted by the New York State Legislature to take effect immediately. Partnership Law, Art. 8, covering limited partnerships, is repealed and the Uniform Act is inserted in its place. N. Y., Laws 1922, c. 640. With the exception of the numbering of the sections the Act adopted is without variation that prepared by the Committee on Commercial Law of the National Conference of Commissioners on Uniform State Laws and approved by the parent body in 1916. See Terry, *Uniform State Laws* (1920) 533-47. The Act is at present in force in thirteen jurisdictions, the others being Alaska, Illinois, Pennsylvania, Maryland, Virginia, Tennessee, Idaho, Iowa, Minnesota, New Jersey, Wisconsin and Utah. For a good general discussion of the Act with particular reference to the law of Pennsylvania, see Lewis, *The Uniform Limited Partnership Act* (1917) 65 Univ. of Pa. Law Rev. 715.

The general nature of a limited partnership is discussed in (1922) 22 COLUMBIA LAW REV. 576.

[1] See *Moorhead* v. *Seymour* (1901) 77 N. Y. Supp. 1050, 1054; Burdick, *Partnership* (3rd ed. 1917) 383.

[2] See *Moorhead* v. *Seymour, supra,* footnote 1, 1055; *Clapp* v. *Lacey* (1868) 35 Conn. 463, 466.

[3] N. Y. Laws 1919, c. 408. [4] § 91—Uniform Act § 2. [5] § 90.

[6] *Ibid.*

[7] § 91 (1) (b)—Uniform Act § 2 (1) (b).

prerequisite to formation,[8] but this provision no longer appears[9] nor is the requirement of publication continued.[10] Finally, the certificate need no longer affirm that all the signatories are of full age.[11]

By the Act of 1919 limited partnerships were expressly forbidden to carry on either the banking or insurance business.[12] Now they "may carry on any business which a partnership without limited partners may carry on,"[13] and the field in which general partnerships may engage is not limited by the Partnership Law. The same policy for excluding limited partnerships from the banking and insurance fields being present today, it seems unlikely that their entrance therein will now be permitted, the prohibition coming, however, from the banking and insurance laws, rather than from partnership legislation.

One of the most vital changes made is that allowing the special partner to make his contribution either in cash or other property.[14] In New York and most other jurisdictions, cash only was acceptable,[15] and this provision was strictly construed by many courts.[16] Services are still excepted,[17] undoubtedly as their value is not capable of exact estimation, and as they are not available to creditors in case of non-payment of partnership obligations. This change is a salutary one, widening the field of potential investors.

Additional limited partners may be admitted by recording such admission in the filed certificate.[18] Also, a general partner may now make contributions in respect to which he shall have the same rights against other partners as if he were a limited partner.[19] At the expiration of the terms stated in the certificate,[20] or on the death, retirement, or insanity of a general partner, the partnership is dissolved unless continued under a stipulation in the certificate, or with the consent of all members.[21] All changes must be recorded with the original certificate and the requirements for cancellation and amendment are set out in detail in the Act.[22] Provision is also made for existing partnerships to comply with the new provisions if they so desire.[23]

The position of the special partner has been changed from that of a general partner with certain immunities to that of an investor—in no sense a partner in the legal contemplation of that term. Protection is extended to him both expressly and by implication. § 117 states that the Act, although in derogation of the common law, shall be liberally construed so as to effectuate its purposes.[24]

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[8] § 91.

[9] The same purpose is realized, as the certificate which contains a description of the limited partners' contributions, must be sworn to.

[10] § 92.

[11] Partnership Law (Old) § 90, 3. A limited partnership is not defective because one of the partners is not of age. *Continental Nat. Bk.* v. *Strauss* (1893) 137 N. Y. 148, 32 N. E. 1066; *cf. Parker* v. *Oakley* (Tenn. 1900) 57 S. W. 426 (general partnership). But as the infant may repudiate his contract obligation the notice given by the old law seems desirable.

[12] § 90.

[13] § 92—Uniform Act § 3.

[14] §§ 93; 91 (1) (a) VI—Uniform Act §§ 4; 2 (1) (a) VI.

[15] §§ 90, 91; see Gilmore, *Partnership* (1911) 606-7.

[16] See (1922) 22 COLUMBIA LAW REV. 578, footnote 21.

[17] § 93—Uniform Act § 4.

[18] Partnership Act (Old) § 101; (New) § 97—Uniform Act § 8.

[19] § 101—Uniform Act § 12. This is a new provision and one that will not endanger firm creditors, as such a party is made subject to all the restrictions of a general partner, while his rights in respect to his contribution are available only against the other members.

[20] § 91 (1) (a) V—Uniform Act § 2 (1) (a) V.

[21] § 109—Uniform Act § 20.

[22] § 114—Uniform Act § 25.

[23] § 119—Uniform Act §30. The change is not required, and if not made, a previously formed limited partnership is to be conducted as if this article had not been passed.

[24] See (1922) 22 COLUMBIA LAW REV. 577, footnote 14.

"Substantial compliance" with the provisions for formation is declared to be sufficient.[25] Formerly the limited partner was liable generally for any non-compliance with the Statute, regardless of whether it caused damage to third parties or whether it was caused by his own misfeasance or nonfeasance,[26] that of a general partner,[27] or even of a third party.[28]

The Uniform Act does not hold him to such strict accountability. In general he is not liable unless he takes part in the control of the business.[29] Of particular importance is § 100 concerning a party who erroneously but in good faith believes he has become a special partner. No general liability attaches to him if, on learning of his mistake, he immediately renounces his profits or other compensation. If there is a false statement in the certificate, under § 95 he is liable only if he had knowledge thereof at the time of signing or thereafter but within time to file a petition for amendment or cancellation before a creditor relied on the misstatement.

Although general control of the business is left in the hands of the general partners, their actions without the consent of all the special partners are specifically prohibited in many respects.[30] The limited partner has a right at all times to complete information in regard to the firm's business, to a formal accounting whenever reasonable, and to a dissolution and winding up by order of the court.[31]

The attractiveness of limited partnerships to investors is greatly increased by § 105. Contrary to all previous legislation on the subject, the present Act permits the withdrawal of the special partner's contribution if so provided in the certificate.[32] Details are also given for the assignment of his interest and the substitution in his place of his assignee as a limited partner.[33] He may make loans or transact other business with the firm as a third party.[34] He is not a proper party to proceedings by or against the partnership unless their object is to enforce a limited partner's right or liability.[35]

General creditors are still amply protected.[36] For any breach of the Statute to which the special partner was privy he is subjected to unlimited liability as if he were a general partner.[37] His liability to the firm may not be waived to the detriment of creditors.[38] In settling accounts, he yields priority to all except general partners.[39] No partnership property may be held by a limited partner as security,[40] nor may a release, payment or conveyance be made to him if the concern's assets are insufficient to satisfy third parties.[41]

It is unfortunate for the best interests of uniform legislation that the notation of the Uniform Act was not retained.[42] This might easily have been done by

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[25] § 91 (2)—Uniform Act § 2 (2). [26] §§ 94, 97, 99, 100.
[27] *Strang* v. *Thomas* (1902) 114 Wis. 599, 91 N. W. 237.
[28] *Smith* v. *Argall* (N. Y. 1844) 6 Hill 479, *aff'd* (1846) 3 Denio 435.
[29] § 96—Uniform Act § 7. [30] § 98—Uniform Act § 9.
[31] § 99 (1)—Uniform Act § 10 (1).
[32] Unless specifically provided in the certificate, or by agreement of all members, the return may be only in cash, regardless of the nature of the original contribution. § 105 (3)—Uniform Act § 16 (3).
[33] § 108—Uniform Act § 19. [34] §102—Uniform Act § 13.
[35] § 115—Uniform Act § 26.
[36] Creditors of the special partner are also protected. Although, once having made his contribution, title thereto passes to the partnership from the special partner, his interest may be charged by a creditor through appropriate court procedure. § 111—Uniform Act § 22.
[37] §§ 95, 100—Uniform Act §§ 6, 11. [38] § 106 (3)—Uniform Act § 17 (3).
[39] §112—Uniform Act § 23.
[40] § 102—Uniform Act § 13.
[41] *Ibid.*
[42] A vigorous argument against changes in uniform legislation, with particular reference to the Uniform Limited Partnership Act in Iowa is found in Perkins, *Uniform Legislation* (1920) 6 Iowa Law Bul. 1.

making it a separate law or adopting it *in toto* as § 90 of the Partnership Law. It is evidence of a commendable trend, however, that the Act is otherwise unchanged, that it is to be cited as the Uniform Limited Partnership Act,[43] and that another uniform law was enacted on the same day.[44]

[43] § 116—Uniform Act § 27.

[44] Uniform Conditional Sales Act. N. Y. Laws 1922, c. 642. For a detailed analysis, see (1922) 22 COLUMBIA LAW REV. 584.